



# **Power of Attorney**



## ***What is a power of attorney?***

A power of attorney (POA) is a document that authorizes someone else to act in your name as you.

## ***Are there different kinds of powers of attorney?***

Yes, a general and a special. A general power of attorney allows your agent to do anything that you could legally do. A special (or limited) power of attorney limits the agent's authority to particular acts that you describe.

## ***When does a power of attorney expire?***

Whenever you wish, but our office policy is generally to set a termination date of one year from execution.

## ***What are some of the things a special power of attorney can do?***

You can grant your agent the authority to perform several acts using a special power of attorney. It might include buying or selling real estate, purchasing or registering or selling a car, signing an income tax return, taking out a loan, or clearing quarters during a PCS move, among other things. If you have something very special that you'd like your agent to do for you, talk to an attorney about it before executing the POA.

## ***Are there any things an agent cannot do?***

In some states, certain actions that are especially important and personal cannot be delegated to another. For example, a marriage ceremony or will execution cannot be done by power of attorney. There are also cases when a particular form of power of attorney is required. Banks, financial organizations, and the Internal Revenue Service, for example, usually require that you use their own forms. But this particular requirement is not state or federal law; it is a business practice, and the form used is not particularly legally significant.

## ***All this sounds like a good deal – why doesn't everyone have a power of attorney?***

There's a risk that the agent might abuse the power. A recently separated spouse, for example, might use a power of attorney from the other spouse to clean out couple's bank accounts, go on a shopping spree, or sign up for a bunch of new credit cards.

## ***What steps can I take to prevent improper use of my power of attorney?***

- Never have a power of attorney unless you need one.
- You could have one prepared but delay signing it or delivering it to your agent until you're sure you need it.
- Always put an expiration date on your power of attorney, preferably one that makes it last only as long as it will be needed, and very rarely more than one or two years.
- Never use a general power of attorney when a special will do.
- Be careful in choosing your agent. Your agent must be at least 18 years old and capable of carrying out your wishes. The agent should be trustworthy, mature, and s/he should understand the responsibility of an agent!
- If you want to terminate a power of attorney before its stated expiration date, the safest way to do this is to retrieve all the copies and originals given to your agent, and all photocopies that may have been given to banks, realtors, merchants, landlords, and other people. If you can't do that, the next best method is to execute a Revocation of the Power of Attorney and give a copy to any person that might deal with the agent named in the

original power of attorney. In some states you may also record the revocation in the county Registrar's Office where the original power of attorney was recorded or was to be used. Just remember that if anyone enters into a contract while reasonably relying on the original power of attorney, even after it has been revoked, then you are liable on that contract.

***Are there any special requirements for powers of attorney?***

A power of attorney must be signed in front of a notary public. If you wish, it can be recorded at the county Registrar's Office in the location where the power of attorney will be used, but that's not required.

***Does every business or bank have to accept my power of attorney?***

Some businesses or banks require that you use their own pre-drafted powers of attorney, or that the power of attorney be recorded. This is not a legal requirement; it's just a business practice. But they might refuse to do business with you if you don't comply. So, if you're relying on a power of attorney to accomplish something important, check with the business or bank beforehand to be sure that it will actually be accepted.

***Does a power of attorney expire upon my death or mental incapacity?***

A power of attorney always expires on the death of the grantor (the person signing it) or of the agent named in it. A power of attorney also usually expires upon the grantor's becoming incompetent. However, a mentally competent grantor may include a clause in a power of attorney that makes the power of attorney effective even during the grantor's subsequent mental or physical incapacity (called a "durable" power of attorney). In many states, durable power of attorneys must be recorded if the grantor does become mentally incapacitated.

***How does my agent actually sign for me?***

The agent should sign the grantor's name, then sign the agent's name, and then indicate the agent's authority to sign. For example, "John Grantor, by Mary Agent, with Power of Attorney."

***What if my agent abuses the power of attorney?***

Unfortunately, you might still be on the hook. If your agent uses a power of attorney that you revoked, for instance, but the business your agent is dealing with doesn't know that the POA was revoked, you can be liable to the third party *even though you revoked the POA*. It might sound silly, but it's the law. Now, this doesn't mean that you're ultimately going to lose out, because you can sue your agent for reimbursement, but that process is long and difficult and costly, and maybe not worth the trouble. If this happened to you, be sure to talk to an attorney.

**BEWARE: A GENERAL POWER ATTORNEY GIVES YOUR AGENT THE AUTHORITY TO DO ALMOST ANYTHING IN YOUR NAME. IF YOUR FORMER FRIEND, FORMER SPOUSE, OR FORMER SIGNIFICANT OTHER USES A VALID POWER OF ATTORNEY YOU GAVE HIM, THEN YOU ARE LEGALLY RESPONSIBLE FOR WHATEVER THAT AGENT MAY HAVE DONE. BE SURE YOU KNOW AND TRUST YOUR AGENT!**

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